

retail and wholesale service should be allocated according to their relative incurrence.

14. Facilities-based carriers will lose their ability to reduce the retail margin of their wholesale operations through a temporary tariff filing if their retail revenues do not equal (break even) or exceed their retail expenses.

15. Part 64 is based on a fully allocated or fully distributed cost methodology where all costs are allocated to service based on the relative amount of usage.

16. Using the Part 64 methodology, costs associated with the physical handling of cellular radiotelephone calls would be allocated between wholesale and retail operations.

17. Cellular Dynamics' avoided costs definition relies on the premise that retail activities never existed.

18. There has been no change to the requirement that facilities-based wholesale costs allocation be based on the assumption that retail activities have been discontinued.

19. D.90-10-047 denied Advantage Group's application for rehearing of the avoided cost method.

20. The facilities based carriers' USOA cost allocation manual is based on the facilities-based carriers' definition of avoided cost.

21. The facilities-based carriers' USOA cost allocation manual allows classification of costs which are shared between wholesale and retail to be allocated in their entirety to the wholesale side.

22. The facilities-based carriers' USOA cost allocation manual does not meet the requirement that retail operations cover all of the costs directly associated with retail business.

23. The facilities-based carriers USOA cost allocation manual does not prevent cross-subsidization.

24. CRA's proposed modifications to the USOA are based on an avoided cost standard.

25. CRA's costing approach provides for costs exclusively incurred for retail operations to be assigned directly in their entirety as a retail cost, and costs exclusively incurred for wholesale operations to be assigned in their entirety as a wholesale cost, including costs that are associated with the physical handling of cellular radiotelephone calls. Costs that are shared between retail and wholesale service are apportioned according to their relative use.

26. CRA's modifications to the USOA is the only proposal which utilizes the avoided cost method and also meets the requirement that retail operations cover all costs associated with the retail side of the business.

27. Assignment between cellular and noncellular should be accomplished up front in the allocation process.

28. Accounts should be distributed to noncellular and cellular operations by direct assignment where appropriate and by allocation for any remaining amounts in the same fashion prescribed for allocating between wholesale and retail.

29. The purpose of a break-even analysis of the facilities-based carriers' retail operation is to discourage cross-subsidies.

30. CACD received advance notice in D.90-06-025 that it would be delegated the responsibility of monitoring the facilities-based carriers' operations for cross-subsidies.

31. Except as provided in Finding 55, a facilities-based carrier may use the temporary tariff procedure to reduce its retail margin upon acknowledgement by CACD that the USOA report the carrier submitted shows that its retail revenues equal (break-even) or exceed its retail expenses.

32. Retail costs for purposes of the break-even analysis should include a rate of return on investment dedicated to retail service that would not be needed for wholesale-only operations.

33. Utilizing a rate of return for the break-even analysis as required by D.90-06-025 is not an implementation of cost of service regulation.

34. Rate of return, which is expressed as a percentage, reflects payment for the use of capital, both debt and equity.

35. A carrier is not predatorily pricing towards the resellers, if a carrier's retail operations are covering all of the costs directly associated with that business.

36. From a rational business perspective, the cost of capital, both equity and debt, is merely one of the costs of doing business.

37. The rate of return cap, after sharing, as adopted in the incentive regulatory framework proceeding, is a reasonable rate of return to use for the break-even analysis.

38. Resellers that want to provide switching services may file a petition for modification of their certificate of public convenience and necessity to operate as a switch reseller.

39. CSI provided a reseller switch proposal for its own specific operations.

40. CSI's switch proposal relies upon capabilities of switches and switch software that have not yet been developed, tested, and made available on the open market.

41. Technical innovation is accelerating to the extent that a reseller switch proposal may be technically viable in the very near future.

42. Cellular facilities, including switches, are subject to the requirements of Commission Rule 17.1 and G.O. 159.

43. Cellular resellers do not have to prove the engineering or technological feasibility of their switches.

44. There is no incentive for resellers to install a switch that is not technically and economically feasible and which cannot communicate with the switches of facilities-based carriers.

45. Wholesale services being sold by facilities-based carriers can be unbundled.

46. The unbundling of wholesale rates is consistent with our Phase I goal of increasing the competitive forces for cellular service and encouraging the most rapid expansion of cellular service and new technology that is reasonably possible.

47. The unbundling of wholesale rates must be accomplished before resellers can evaluate the economic viability of a reseller switch.

48. There is no consensus among the parties on a standard definition of incremental cost or an incremental cost methodology for unbundling wholesale rates for the reseller switch.

49. The incremental cost methodologies proposed by the parties would result in a great deal of controversy and would not produce reasonable tariffed rates because of the difficulty in making long-term estimates for this industry.

50. The adoption of an incremental cost methodology using the definitions proposed by the parties would delay the implementation of unbundled tariffs and be inconsistent with the Phase I goal of encouraging the most rapid expansion of cellular service and new technologies through competition.

51. The use of direct embedded cost methodology is less controversial and will result in fair and reasonable unbundled tariff rates.

52. It is reasonable to utilize a 14.75% rate of return for unbundling wholesale tariffs.

53. A 14.75% rate of return will ensure consistency and comparability.

54. The unbundling of wholesale rates for competitors into cost-based rate elements for those functions that competitors cannot provide does not constitute rate base regulation. Existing retail and wholesale rates will remain market priced.

55. The MSAs with resellers may not use the advice letter process to reduce their retail margin until they have approved unbundled wholesale tariffs in order to encourage quick implementation of unbundled tariffs to promote competition.

56. Encouraging additional competition in the cellular industry will allow future streamlining of regulatory rules, reducing regulatory oversight for cellular service providers.

57. Ordering Paragraph 10 of D.90-06-025 requires interconnection arrangements between cellular carriers and LECs to be offered on a nondiscriminatory basis. The term cellular carriers is not restricted to only facilities-based carriers.

58. The FCC does not preempt us from either continuing our current resell policy of prohibiting a facilities-based carrier from competition with itself in the same market through a reseller affiliate or from relaxing the ban.

59. There is no practical way the Commission can monitor information transfers between carriers and resale affiliates when the same people perform functions for both.

60. Despite any safeguards put in place, information transfers between facilities-based carriers and reseller affiliates would still likely occur.

61. It is potentially anti-competitive to have an affiliate of a facilities-based carrier providing resale service in the same territory as the facilities-based carrier.

62. D.87-09-028 stated this Commission's intent that PTMS should divest itself of its Bay Area customers.

63. PTMS has not complied because BACTC's minority partner refused to approve the customer transfer.

64. On August 11, 1992 we issued an order instituting rulemaking on reporting requirements for affiliate transactions.

65. The interim affiliate transaction rules adopted in the order specifically apply to cellular facilities-based carriers.

66. McCaw filed a motion to strike a portion of CRA's comments because CRA exceeded the 25-page limit provided for in Rule 77.3.

67. Rule 77.3, in relevant part, limits the filing of comments in major generic proceedings, such as in this proceeding, to 25 pages plus a subject index listing the recommended changes to the proposed decision, a table of authorities, and an appendix setting forth findings of fact and conclusions of law.

68. CRA's comment page count totaled 55 pages, which exceeded the allowable comment page count by 30 pages.

69. Had CRA filed a timely motion to extend the comment page limit, we would have considered such a motion, and upon determination of good cause granted some relief to the page limit.

70. McCaw objected to CSI's comments regarding events that have developed subsequent to the closing of the record and two partial newspaper articles attached to CSI's comments.

71. Rule 77.3 states, in pertinent part, that new factual information, untested by cross-examination, shall not be included in comments and shall not be relied on as the basis for assertions made in post-publication comments.

72. BACTC filed comments to the proposed decision on July 3, 1992.

73. Rule 77.2 required comments to the ALJ's proposed decision to be filed by July 2, 1992.

74. BACTC did not request or receive an extension of time to file its comments to the ALJ's proposed decision.

Conclusions of Law

1. A streamlined certification process for RSAs facilities-based carriers should not be adopted at this time.

2. Reporting requirements for the assessment and monitoring of cellular capacity utilization and capacity expansion should not be adopted at this time.

3. Facilities-based carriers should be required to report their retail revenues and expenses each six months.

4. Cellular Dynamics' definition of avoided cost should not be adopted.

5. Cellular Dynamics' USOA proposal should not be adopted.

6. The facilities-based carriers' USOA manual should not be adopted.

7. CRA's modifications to the USOA should be adopted, as discussed in this order.

8. Facilities-based carriers operating in MSAs with resellers that want to use the temporary tariff process to reduce the retail margin, should first have unbundled wholesale tariffs in place and also have acknowledgement from CACD that the adopted USOA reports submitted to CACD demonstrate that their retail operation is operating at a break-even basis. Carriers in RSAs and MSAs without resellers need only do the latter unless they are notified that a reseller wants to provide a switch.

9. Retail costs should include a rate of return on investment dedicated to retail service that would not be needed for wholesale-only operations.

10. A 14.75 percent rate of return should be included in the break-even analysis.

11. CRA's proposed break-even analysis as modified to reflect a 14.75% rate of return should be adopted.

12. Cellular resellers should be allowed to acquire interconnected NXX codes on the same basis as the facilities-based carriers.

13. Procedures should be established for resellers that want to provide their own switches.

14. Parties have not agreed on a single definition of long-run incremental costs to be used as the basis for unbundling wholesale rates. Therefore, direct embedded costs should be the basis for unbundling wholesale rates.

15. The facilities-based carriers' rates should be unbundled for competitors.

16. Violation of any part of any of our orders constitutes contempt of the Commission. Any such violation may be punishable by a fine of up to \$2,000 per day under §§ 2107 and 2108, in addition to contempt penalties.

17. The ban on facilities-based carriers' affiliates providing resale service within the facilities-based carriers' territory should not be lifted.

18. Facilities-based carriers should not be allowed to have reseller affiliates in the same market because the potential exists for anti-competitive behavior and cross-subsidization.

19. PTMS should sell its Bay Area customers to BACTC or some other cellular company.

20. The underlying reasons for the ban on affiliate competition do not apply in GTEM-CA's provision of cellular service through credit card telephones installed in rental cars, public transportation vehicles such as limousines and vans, offshore drilling platforms, and other such similar locations, in the same northern California markets in which GTE Mobilnet Ltd. now operates.

21. Absent a timely request and authority for extended comments we should reject CRA's comments and afford such comments no weight. However, we should afford CRA's comments similar treatment given to LA Cellular's 311 comments filed in the prior phase of this investigation.

22. CSI's Appendices B and C with related portions of comments in CSI's comments to the proposed decision should not be considered.

23. BACTC's comments should be rejected.

O R D E R

IT IS ORDERED that:

1. A streamlined certification process for Federal Communications Commission Rural Statistical Areas (RSAs) permit holders shall not be adopted at this time.

2. The USOA for facilities-based carriers shall be modified to incorporate the avoided cost methodology appended to this order as Appendix B.

3. Assignment between cellular and noncellular shall be accomplished up front in the allocation process.

4. Accounts shall be distributed to noncellular and cellular operations by direct assignment where appropriate and by allocation for any remaining amounts in the same fashion prescribed for allocating between wholesale and retail.

5. The USOA shall, except for imputed wholesale customer revenues from a facilities-based carriers' retail operations for reselling wholesale service, reflect actual costs. The cost allocation modifications identified in Ordering Paragraph 2 shall be applied on a consistent basis so that the specific assignment and allocation procedures distribute no more and no less than 100% of recorded (actual) revenues and expenses among the facilities-based carriers' wholesale, retail, and nonregulated activities.

6. The facilities-based carriers shall provide, on the adopted USOA allocation basis, semiannual financial reports to CACD's Director no later than 45 days after the last day in the semiannual period and shall continue to be prepared and provided until notified by the Executive Director in writing that the semiannual reports no longer need be prepared and provided to CACD. The semiannual report shall cover the periods from January 1 through June 30 and from July 1 through December 31, with the first required report to be mailed to CACD covering the period July 1,

1992 through December 31, 1992. The semiannual financial statements shall be made available for public inspection by CACD upon request.

7. Cellular carriers required to utilize the USOA, as modified by this order, shall provide within 30 days of attestation but not later than March 31, a statement from their independent auditors attesting that the cellular carrier's financial statements for each 6-month period of the prior year, were prepared in accordance with the revised USOA, and utilized the avoided cost methodology adopted by this order.

8. The facilities-based carriers shall unbundle their wholesale rates into specific subcomponents on a direct embedded cost basis which shall be tariffed as discussed in Section 11 of this decision. Distinctive subcomponents shall be established for air time, billing, switching and interconnection. Facilities-based carriers in MSAs with resellers shall tender for filing applications unbundling their wholesale rates within 120 days after the effective date of this order. Facilities-based carriers in RSAs and carriers operating in MSAs without resellers shall file applications to unbundle their rates within 120 days after the filing of an application by a reseller requesting authority to provide switched cellular services within the MSA's or RSA's service territory.

9. Cellular Service, Inc.'s (CSI) switch proposal shall not be adopted at this time.

10. Any certificated switchless reseller or new cellular reseller applicant that desires to own, control, operate, or manage its own cellular switch should file a petition for modification of its certificate of public convenience and necessity to provide such service. It shall serve this Petition for Modification on the service list for this proceeding. (I.88-11-040, A.87-02-017)

11. Facilities-based carriers operating in MSAs with resellers that want to use the temporary tariff procedure to reduce

the retail margin, shall first have unbundled wholesale tariffs in place and also have acknowledgement from CACD that the adopted USOA reports submitted to CACD demonstrate that their retail operation is operating at a break-even basis. Carriers in RSAs and MSAs without resellers need only do the latter unless they are notified that a reseller wants to provide a switch.

12. Affiliates of facilities-based carriers shall not be authorized to provide resale service in the same territory as the facilities-based carrier.

13. PacTel Mobile Services shall have 120 days from the effective date of this order to transfer its Bay Area customers to either BACTC or another cellular company. PacTel Mobile Services shall notify the CACD Director of its compliance with this order within 15 days of compliance.

14. GTEM-CA is granted a waiver from the ban on affiliate resellers to continue its credit card cellular service adopted by D.92-05-021, as long as GTEM-CA and GTE Mobilnet Ltd. continue to comply with that order and GTE Mobilnet Ltd. continues to be considered a dominant carrier for affiliate transaction requirements adopted in R.92-08-008.

15. Application 87-02-017 is closed.

16. This investigation shall remain open to solely address the rehearing of Resolution T-14619 regarding Ordering Paragraph 9 of D.90-06-025, as granted by D.92-04-081.

17. Cellular Resellers Association, Inc.'s comments to the Administrative Law Judge's (ALJ) proposed decision on pages 24, 25, and Appendix C are rejected.

18. CSI's Appendices B and C with related portions of comments in CSI's comments to the ALJ's proposed decision is rejected.

I.88-11-040, A.87-02-017 COM/JBO/kpc

19. Bay Area Cellular Telephone Company's comments to the ALJ's proposed decision are rejected.

This order becomes effective 30 days from today.

Dated October 6, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

I abstain.
/s/ PATRICIA M. ECKERT
Commissioner

APPENDIX A

Page 1

List of Appearances

Respondents: Jackson, Tufts, Cole & Black, by William H. Booth, Joseph S. Faber, and Evelyn K. Elsesser, Attorneys at Law, for US West Cellular of California, Inc.; Peter A. Casciato, Attorney at Law, for Cellular Resellers Association, Inc. and Cellular Service Inc.; Pillsbury, Madison & Sutro, by Mary B. Cranston, Maria M. Astengo, and Megan Pierson, Attorneys at Law, for PacTel Cellular Corporation and its subsidiaries, Los Angeles SMSA Limited Partnership, PacTel Mobile Service, and Sacramento Valley Limited Partnership; Orrick, Herrington & Sutcliffe, by Robert J. Gloistein, Attorney at Law, for Fresno MSA Limited Partnership; Graham & James, by Martin A. Mattes, Rachelle B. Chong, and Adam Andersen, Attorneys at Law, for Bay Area Cellular Telephone Company; David Discher, Attorney at Law, for Pacific Bell; Gold, Marks, Ring & Pepper, by Alan L. Pepper and Joshua L. Rosen, Attorneys at Law, for Cellular Dynamics Telephone Company of San Francisco, Inc., Cellular Dynamics Telephone Company of Los Angeles, Inc., and Cellular Dynamics Telephone Company of San Diego, Inc.; Cooper, White & Cooper, by E. Garth Black and Mark P. Schreiber, Attorneys at Law, for Roseville Telephone Company; Armour, Goodin, Schlotz & Mac Bride, by James D. Squeri, Barbara L. Snider, and John L. Clark, Attorneys at Law, for GTE Mobilnet of California and GTE Santa Barbara Limited Partnership; Morrison & Forester, by James M. Tobin and Dhruv Khanna, Attorneys at Law, for McCaw Cellular Communications, Inc. and affiliates; Dinkelspiel, Donovan & Reder, by David M. Wilson, Attorney at Law, for Los Angeles Cellular Telephone Company; Roger P. Downs, Attorney at Law, for PacTel Cellular and its affiliated cellular partnerships; Jake Workman, Attorney at Law, and Jennifer S. Pomeroy, for US West Cellular of California, Inc.; Jerome Sanders, for Nationwide Cellular Service, Inc.; and Ralph W. Schultheis, for Mission Bell Telecommunications.

Interested Parties: Cooper, White & Cooper, by E. Garth Black and Mark P. Schreiber, Attorneys at Law, for Calaveras Telephone Company, California-Oregon Telephone Company, Ducor Telephone Company, Foresthill Telephone Company, Happy Valley Telephone Company, Hornitos Telephone Company, The Ponderosa Telephone Company, The Volcano Telephone Company, and Winterhaven Telephone Company; Chickering & Gregory, by C. Hayden Ames, Attorney at Law, for Chickering & Gregory; Beck, Young, French & Ackerman, by Jeffrey F. Beck and Sheila A. Brutoco, Attorneys at

APPENDIX A

Page 2

Law, for CP National, Citizens Utilities Company of California, Evans Telephone Company, GTE West Coast, Incorporated, Kerman Telephone Company, Pinnacles Telephone Company, Sierra Telephone Company, Inc., The Siskiyou Telephone Company, and Tuolumne Telephone Company; Randolph W. Deutsch, Attorney at Law, for AT&T Communications of California, Inc.; Meserve, Mumper & Hughes, by Morley G. Mendelson, Attorney at Law, for Celluphone, Inc.; Pougiales & Haller, by Ann M. Pougiales, Attorney at Law, for California Cellular Agents Association; Josh Stearn, for O'Rourke & Company; L. Russel Mitten and Mark T. Shine, appearing for Citizens Utilities Company of California; and Sidney J. Webb, for himself.

Division of Ratepayer Advocates: James S. Rood, Attorney at Law.

(END OF APPENDIX A)

I.88-11-040, A.87-02-017 COM/JBO/kpc *

APPENDIX B
Page 1

MODIFICATIONS TO THE UNIFORM SYSTEM OF ACCOUNTS
FOR CELLULAR COMMUNICATIONS LICENSEES

Page 24, Paragraph D:

D. In those instances in which the licensee conducts both wholesale and retail cellular operations, if the state regulatory commission exercises accounting jurisdiction over both wholesale and retail cellular operations, a segregation of intangible assets, plant investment, revenues and expenses shall be maintained between the two kinds of cellular services in accordance with procedures set forth herein with respect to each account.

Note: Modifications to the existing USOA are underscored.

Addition to page 42:

102 Allowance for Uncollectible Accounts

* * *

C. The following subaccounts of this account shall be maintained.

102.1 Allowance for Uncollectible Accounts - Wholesale Customers

102.2 Allowance for Uncollectible Accounts - Retail Customers

102.3 Allowance for Uncollectible Accounts - Other

Addition to page 48

112 Intangible Assets

A. This account ... of public convenience and necessity.
The foregoing costs shall be treated as assets related to wholesale service. This account shall also include the cost of acquiring end-use customers or customer lists, which costs shall be treated as assets related to retail service.

Addition to page 53

125 Cellular Communications Plant Acquisition Adjustment

* * *

B. This account shall be subdivided so as to show the amounts included herein for each property acquisition. These amounts shall be further subdivided so as to show the value of acquiring end-use customers or customer lists, which shall be treated as an asset related to retail service.

Addition to page 67

302 Buildings

* * *

D. Building cost shall be allocated between wholesale and retail activities in proportion to the square feet of floor space devoted to wholesale and to retail operations.

Addition to page 68

304 Leasehold Improvements

C. Leasehold improvements shall be allocated between wholesale and retail according to the relative usage of the improved property in terms of square feet of floor space devoted to wholesale and to retail operations.

Addition to pge 70

314 Vehicles

A. This account shall include the cost of passenger and service vehicles and other vehicular work equipment.

B. The costs in this account shall be allocated between wholesale and retail operations according to the assignment of the vehicles to wholesale and retail activities. When a vehicle is used for both wholesale and retail purposes, the costs shall be allocated according to the mileage incurred in connection with wholesale and retail activities.

318 Office Furniture and Equipment

A. This account shall include the cost of office furniture.

B. The costs in this account shall be allocated between wholesale and retail operations in accordance with the relative use of the items for wholesale and retail activities.

Page 78, Account 502, Wholesale Customer Revenues

... The licensee shall separately identify revenue from sales to its own retail operation or affiliates and revenue from sales to certificated resellers.

Additions and Changes to page 83

621 Customer Accounts and Service Expense

621.1 Wholesale Customer Accounts and Billing Expense

This subaccount shall include the cost of generating the billing tapes that are provided to resellers and to carrier's retail operations. It shall also include the cost of generating the invoices that are rendered to resellers.

621.2 Retail Customer Accounts and Billing Expense

This account shall include the cost of all other (non-wholesale) labor, materials used and expenses incurred ...

623 Bad Debt Expense

A. This account shall be charged ...

B. The following subaccounts shall be maintained

623.1 Bad Debt Expense - Wholesale Customers

623.2 Bad Debt Expense - Retail Customers

623.3 Bad Debt Expense - Other

Additions and Changes to page 83

625 Sales Promotion and Advertising Expenses

625.1 Wholesale sales, promotion and advertising expenses

This subaccount shall include the cost of personnel devoted to sales to resellers. It shall also include promotional and advertising programs that are jointly supported by resellers, that promote cellular service without reference to the carrier's retail operations or its agents, or that identify all potential retail outlets of the carrier's cellular service, including resellers.

625.2 Retail Sales, Promotion and Advertising Expenses, Excluding Commissions

This subaccount shall include the costs of labor, materials used and expenses, excluding commissions, incurred in the performance of marketing, sales promotion and advertising that identifies or pertains to the carrier's retail outlets or its agents.